

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
COMPLIANCE ASSISTANCE AUTHORIZATION ACT OF 1998

MARCH 17, 1998.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Education and the
Workforce, submitted the following

REPORT

[To accompany H.R. 2864]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2864) to require the Secretary of Labor to establish a program under which employers may consult with State officials respecting compliance with occupational safety and health requirements, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998”.

SEC. 2. COMPLIANCE ASSISTANCE PROGRAM.

Section 21 of the Occupational Safety and Health Act of 1970 is amended by adding at the end the following new subsection:

“(d)(1) The Secretary shall establish and support cooperative agreements with the States under which employers subject to this Act may consult with State personnel with respect to—

“(A) the application of occupational safety and health requirements under this Act or under State plans approved under section 18; and

“(B) voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment.

Such agreements may provide, as a condition of receiving funds under such agreements, for contributions by States towards meeting the costs of such agreements.

“(2) Pursuant to such agreements the State shall provide on-site consultation at the employer’s worksite to employers who request such assistance. The State may also provide other education and training programs for employers and employees in

the State. The State shall ensure that on-site consultations conducted pursuant to such agreements include provision for the participation by employees.

“(3) Activities under this subsection shall be conducted independently of any enforcement activity. If an employer fails to take immediate action to eliminate employee exposure to an imminent danger identified in a consultation or fails to correct a serious hazard so identified within a reasonable time, a report shall be made to the appropriate enforcement authority for such action as is appropriate.

“(4) The Secretary shall, by regulation after notice and opportunity for comment, establish rules under which an employer—

“(A) which requests and undergoes an on-site consultative visit provided under this subsection,

“(B) which corrects the hazards that have been identified during the visit within the time frames established by the State and agrees to request a subsequent consultative visit if major changes in working conditions or work processes occur which introduce new hazards in the workplace, and

“(C) which is implementing procedures for regularly identifying and preventing hazards regulated under this Act and maintains appropriate involvement of, and training for, management and non-management employees in achieving safe and healthful working conditions,

may be exempt from an inspection (except an inspection requested under section 8(f) or an inspection to determine the cause of a workplace accident which resulted in the death of one or more employees or hospitalization for 3 or more employees) for a period of one year from the closing of the consultative visit.

“(5) A State shall provide worksite consultations under paragraph (2) at the request of an employer. Priority in scheduling such consultations shall be assigned to requests from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request.”

PURPOSE

The purpose of H.R. 2864 is to provide worksite safety and health consultations and other education and training programs through cooperative agreements with states and use of state personnel.

COMMITTEE ACTION

The Subcommittee on Workforce Protections held a series of three hearings in 1997 on the subject of Occupational Safety and Health Administration (OSHA) reinvention. Those hearings were the basis of several bills introduced by Representative Cass Ballenger on November 7, 1997, including H.R. 2864.

The first hearing was held on June 24, 1997, to learn the views and perspective of OSHA on its effort to “reinvent” the agency. The Acting Assistant Secretary for OSHA, Greg Watchman, testified at the hearing.

The second hearing was held on July 23, 1997, to examine OSHA’s reinvention project, hearing testimony from a variety of individuals who have either studied or had recent experiences with OSHA. The witnesses included Mr. Ronald Schaible, Director, Global Safety, AMP Incorporated, Harrisburg, Pennsylvania; Ms. Kathleen Winters, Corporate Manager, Environmental Health and Safety, Mack Printing Company, Easton, Pennsylvania; Dr. Gary Rainwater, President, American Dental Association, Dallas, Texas; Mr. James Gonzalez, Attorney-at-Law, Holland and Hart, Denver, Colorado; Mr. Richard S. Baldwin, Safety and Health Director, BE&K, Birmingham, Alabama; Professor John Mendeloff, Graduate School of Public and International Affairs, University of Pittsburgh, Pittsburgh Pennsylvania; Ms. Lee Anne Elliott, Executive Director, Voluntary Protection Programs, Participants’ Association, Falls Church, Virginia; and Mr. Mike Wright, Director, Health, Safety

and Environment Department, United Steelworkers of America, Pittsburgh, Pennsylvania.

The third hearing was held on September 11, 1997, to hear from individuals with a first hand knowledge of OSHA's reinvention program and on changes that should occur as OSHA moves into the 21st century. The following witnesses testified: Mr. Gerald V. Anderson, President, Anderson Construction Company, Fort Gaines, Georgia; Mr. James Abrams, Corporate, Labor, and Employment Attorney, Denver Colorado; Mr. Frank White, Vice President, Organization Resources Counselors, Inc., Washington, DC; Mr. Michael C. Nichols, Vice President, Management Development/Human Resources, Sysco Corporation, Houston, Texas; Mr. Norbert Plassmeyer, Vice President and Director of Environmental Affairs, Associated Industries, Jefferson City, Missouri; and Dr. Nicholas A. Ashford, Ph.D, Professor of Technology and Policy, Massachusetts Institute of Technology, Cambridge Massachusetts.

The Subcommittee on Workforce Protections approved H.R. 2864, as amended, by voice vote, on February 4, 1998, and ordered the bill favorably reported to the Full Committee. The Committee on Education and the Workforce approved H.R. 2864 by voice vote on March 11, 1998, and ordered the bill favorably reported to the House.

COMMITTEE STATEMENT AND VIEWS

H.R. 2864 amends the Occupational Safety and Health Act (OSHAct) to require the Secretary of Labor to enter into cooperative agreements with states under which state personnel will provide on-site consultations and other education and training in workplace safety and health requirements.

H.R. 2864 is intended to continue and codify the consultation grants program which was initiated in 1975 by OSHA and the states, and which is set forth in regulations at 29 CFR Part 1908. The consultation grants program was established under OSHA's general authority "to accept and use the services, facilities, and personnel" of any state, with the consent of the state and reimbursement thereof, in carrying out the purposes of the OSHAct. (Section 7(c)(1), 29 USC Section 656(c)(1))

Support for specifically authorizing and requiring the consultation program in the OSHAct has come from small businesses, from the state consultation agencies, and from the Department of Labor.

For example, as one of its proposals to address the burden of regulation on small business, the 1995 White House Conference on Small Business recommended that—

Small business and OSHA must work together in a non-adversarial, supportive relationship to attain public policy safety goals. To accomplish this, Congress must pass legislation * * * [to] require that voluntary compliance audits be performed within 60 days of a request by a small business. Such audits must be educational and non-threatening with written results and no fines issued.

Similarly, in testimony before the Workforce Protections Subcommittee on June 20, 1995, Mr. Bill Weems, testifying on behalf of the National Association of Occupational Safety and Health Con-

sultation Programs (OSHCON), described the benefits of the state consultation programs for workplace safety and health, and recommended that the program be recognized in the OSHAct:

During FY 1994, the state consultation programs collectively provided onsite assistance to 27,278 small employers. Seventy-two percent of the companies served had less than 50 employees, and only 7 percent had more than 150 employees. Forty-seven percent of the companies were engaged in manufacturing, 22 percent in hazardous services, and 15 percent in construction. Almost 170,000 safety or health hazards were identified and voluntarily corrected by these small employers as a result of the consultations. In addition, over 43,000 employees received training relative to the specific hazards in their respective workplaces. * * * Forty-eight of the consultation programs are funded under Section 7(c)(1) of the OSHAct which provides for up to 90 percent federal cost-sharing. The remaining 8 programs are funded under Section 23(g) training grants with 50 percent federal match. Neither Section 7(c)(1) nor Section 23(g) refers specifically to consultation services. OSHCON recommends that any amendment of the OSHAct include language that will provide statutory recognition of these 20-year-old programs.

The Clinton Administration has also supported "codifying" the consultation program, and supports H.R. 2864 as passed by the Committee on Education and the Workforce. On adoption of H.R. 2864 by the Committee, Mr. Charles Jeffress, Assistant Secretary for Occupational Safety and Health, said,

OSHA's consultation program, which has been a feature of the agency since 1975, is one of the agency's most-requested services. The consultation program provides free safety and health assistance to approximately 25,000 workplaces annually. It is an important resource to help small employers protect their workers from worksite hazards. Rep. Ballenger's bill codifying this vital and growing element of OSHA's outreach efforts will help us to realize our goal of reducing injuries and illnesses in 100,000 workplaces over the next five years.

The Committee believes that specifically authorizing the consultation program in the OSHAct (1) will help to assure its continuation as well as its stability in purpose, (2) reflects the importance of this program and of consultative efforts generally to achieving the purpose of OSHA of safe and healthful workplaces, (3) reinforces the important state role in occupational safety and health programs, and (4) is consistent with the Committee's desire to see the availability of consultative services increased.

Despite the broad support for the state consultation programs described above, the state consultation grants have received inadequate funding to meet the demands for consultative services. In his testimony in 1995 on behalf of OSHCON, Mr. Bill Weems said,

Finally, it should be noted that the consultation programs do not presently have the resources to keep pace

with the growing demand for their services. The average response time due to backlog of requests is approximately 60 days. Some programs have reported a response time of up to 2 years.

The following charts compare recent years' funding for the state consultation grants with total funding for OSHA, funding for OSHA enforcement, and funding for federal "compliance assistance" activities.¹ The Committee is hopeful that increased funding for state consultation programs will eliminate the gap between the current inability of the consultation programs to meet the demand for services noted in the testimony of Mr. Weems, and the goal stated by the White House Conference on Small Business, that all requests for consultation be performed within 60 days.

OSHA COMPLIANCE ASSISTANCE

[In millions of dollars]

Year	Consultation visits	State consultation funding	Federal compliance assistance funding
1993	26,296	\$28.5	\$12.4
1994	23,728	30.9	12.9
1995	24,799	31.6	13.4
1996	24,708	32.5	34.8
1997	24,785	34.5	37.4
1998	¹ 25,000	35.4	43.9
1999	¹ 27,000	² 38.757	² 46.5

¹ Estimated.

² Requested by the Administration in the FY 99 budget request.

OSHA FEDERAL ENFORCEMENT PROGRAM

[In millions of dollars]

Year	Inspections	Federal enforcement	Total OSHA funding
1993	39,536	\$134.7	\$288.3
1994	42,377	137.3	296.4
1995	29,113	145.3	311.7
1996	24,024	120.9	303.8
1997	34,264	126.2	324.9
1998	¹ 34,000	128.9	336.5
1999	¹ 34,500	² 135.3	² 355.0

¹ Estimated.

² Requested by the Administration in the FY 99 budget request.

The bill

H.R. 2864 adds a new subsection (d) to Section 21 of the OSHAct to require the Secretary of Labor to enter into cooperative agreements with states under which state personnel will provide on-site consultations and other safety and health education and training activities.

The use of the term "state personnel" in H.R. 2864 is intended to include both employees of state agencies and employees of public

¹ State consultation programs have several advantages over "compliance assistance" programs operated directly by OSHA. First, the state consultation programs have a long history of effectively working with employers, particularly small employers, in providing consultative services. Second, the OSHAct limits OSHA's ability to provide direct consultative services. Third, programs administered directly by OSHA are generally limited to the states which do not operate approved state OSHA programs under Section 18 of the OSHAct, and thus discriminate in funding against the 23 "state plan states." In contrast, the consultation grants are available to all states, whether or not the state operates an approved state OSHA program under Section 18.

universities and colleges. Consultative services in several states have been or are being provided by a public university or college, as provided by the agreement between OSHA and the state. The use of the term "state personnel" (which is also the term used in regulations in 29 CFR Part 1908) is intended to allow that variety of arrangements to continue.

As noted in the testimony by Mr. Bill Weems quoted above, 48 consultation programs are currently funded under Section 7(c)(1) of the OSHAct, and 8 programs are funded by grants under Section 23 (g). The current Section 7(c)(1) program allows up to 90 percent of the program cost to be paid by the federal grant; in other words the minimum state match is 10 percent. In fact, many of the states have regularly exceeded their minimum funding requirements for the consultation program. H.R. 2864 does not require a specific state matching rate, but does provide that OSHA may require state matching funding as a condition for federal funding. The availability and provision of funding for the consultation program under this bill, like the Section 7(c)(1) grants, is not intended to replace, and should not affect or reduce, the availability of federal matching funding for education and training activities for "state plan states" under Section 23 (g).

Just as is the case with the current consultation services program, an employer's participation in consultation services under H.R. 2864 would be voluntary on the part of the employer. The state consultation programs have worked well because employers have confidence that it is a voluntary service and that it is not part of any enforcement scheme. That does not, of course, prohibit anyone else, whether state or federal enforcement personnel or the employer's employees, from encouraging the employer to request a consultation. But the consultation may only be scheduled if the employer so requests.

H.R. 2864 emphasizes that consultation services should be conducted separately and independently of any enforcement activity. Only if during the course of a consultation, the consultant observes imminent dangers which the employer fails to address immediately, or serious hazards which the employer fails to address within a reasonable time established with the consultant should a report be made to the appropriate state or federal enforcement agency for enforcement action.

H.R. 2864 requires that states ensure that on-site consultations provided to employers under the bill include provision for the participation of employees in the consultation. The Secretary of Labor has issued regulations, at 29 CFR Section 1908.5, regarding employee participation in consultations currently being provided by states under the cooperative agreements. The bill allows the Secretary of Labor to continue to establish the requirements for employee participation in on-site consultations by regulation. The Committee encourages the Secretary to include in the regulations assurances that (1) the consultant will have reasonable opportunity to confer with employees during the consultation, (2) where there is a recognized labor organization representing the employees in the workplace, and consistent with the collective bargaining agreement, the authorized representative will be allowed to accompany the consultant during the consultation, and (3) to the extent that

violations of OSHA standards are identified in the consultation, information on the violations and corrective actions taken or to be taken as a result of the consultation will be available to affected employees.

H.R. 2864 requires the Secretary to establish, by regulation, rules by which an employer who meets three conditions may be exempt from OSHA's "general schedule" inspections (but not inspections based upon employee complaints or major accidents) for one year from the closing date of the consultation. The three conditions for exemption are as follows: (1) the employer has requested and undergone a consultative visit; (2) the hazards identified in the consultative visit have been corrected or are being corrected in accordance with the time frames established by the consultant, and the employer agrees to request a follow-up consultative visit if the major changes in working conditions or work processes are made; and (3) the employer is implementing procedures for regularly identifying and preventing hazards which are regulated under the OSHAct, and maintains appropriate involvement and safety and health training for management and non-management employees. The requirement that the Secretary issue regulations regarding these conditions is not intended to impose requirements regarding hazards beyond those otherwise being regulated by OSHA.

SUMMARY

H.R. 2864 amends the OSHAct to require the Secretary of Labor to enter into cooperative agreements with states under which state personnel will provide on-site consultations and other education and training in workplace safety and health requirements.

SECTION-BY-SECTION

Section 1. Short title

The title of the bill is the "Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998."

Section 2. Compliance Assistance Program

This section requires OSHA to enter into cooperative agreements with the states under which state officials or other designated persons provide on-site consultations and education and training programs. Employers who request and receive an on-site consultation may be exempt from certain enforcement inspections for one year.

STATEMENT OF CONSTITUTIONAL AUTHORITY

H.R. 2864 amends the Occupational Safety and Health Act, and thus falls within the scope of Congressional powers under Article I, section 8, clause 3 of the Constitution of the United States to the same extent as does the OSHAct.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of the report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill funds state consultation programs; the bill does not prevent legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. The bill funds pre-existing state consultation programs, and as such does not contain any unfunded mandates.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

STATEMENT OF OVERSIGHT FINDINGS OF THE COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2864.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2864. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 2(l)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2864 from the Director of the Congressional Budget Act:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, March 16, 1998.

Hon. WILLIAM F. GOODING,
*Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2864, the Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Cyndi Dudzinski .

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

H.R. 2864—Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998

CBO estimates that enacting this bill would not have a significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2864 contains no intergovernmental or private-sector mandates as defined in the Unfunded mandates Reform Act of 1995 and would not have a significant impact on the budgets of state, local, or tribal governments.

H.R. 2864 would codify and amend the existing State consultation program administered by the Occupational Safety and Health Administration (OSHA). Under current law, states participating in this program provide guidance at no cost to employers to assist them in establishing effective occupational safety and health programs. Such services are provided in response to an employer's request with scheduling priority given to small businesses with the most hazardous operations. If the employer corrects all hazards that have been identified during the consultative visit and meets certain other requirements under current regulations, then the employer may be exempt from a general OSHA inspection for a period of one year.

Under H.R. 2864, the Secretary of Labor would be required to establish rules, by regulation after notice and opportunity for comment, under which an employer may be exempt from an inspection for a period of one year from the closing of a consultative visit. Based on conversations with OSHA staff, CBO estimates that publishing, responding to comments, and submitting the final rule would add approximately \$200,000 in employee hours to the cost of current OSHA activities.

In addition, if the publicity and education that might result from codifying this program increased the demand for state consultation services, the cost of reimbursing states for providing these consultations would rise. In fiscal year 1998, OSHA reimbursed states \$35 million for this program.

The CBO staff contact for the impact on federal costs is Cyndi Dudzinski; the contact for the impact on state, local, and tribal gov-

ernments is Marc Nicole; and the contact for the impact on the private sector is Kathryn Rarick. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECTION 21 OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

TRAINING AND EMPLOYEE EDUCATION

SEC. 21. (a) * * *

* * * * *

(d)(1) The Secretary shall establish and support cooperative agreements with the States under which employers subject to this Act may consult with State personnel with respect to—

(A) the application of occupational safety and health requirements under this Act or under State plans approved under section 18; and

(B) voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment.

Such agreements may provide, as a condition of receiving funds under such agreements, for contributions by States towards meeting the costs of such agreements.

(2) Pursuant to such agreements the State shall provide on-site consultation at the employer's worksite to employers who request such assistance. The State may also provide other education and training programs for employers and employees in the State. The State shall ensure that on-site consultations conducted pursuant to such agreements include provision for the participation by employees.

(3) Activities under this subsection shall be conducted independently of any enforcement activity. If an employer fails to take immediate action to eliminate employee exposure to an imminent danger identified in a consultation or fails to correct a serious hazard so identified within a reasonable time, a report shall be made to the appropriate enforcement authority for such action as is appropriate.

(4) The Secretary shall, by regulation after notice and opportunity for comment, establish rules under which an employer—

(A) which requests and undergoes an on-site consultative visit provided under this subsection,

(B) which corrects the hazards that have been identified during the visit within the time frames established by the State and agrees to request a subsequent consultative visit if major changes in working conditions or work processes occur which introduce new hazards in the workplace, and

(C) which is implementing procedures for regularly identifying and preventing hazards regulated under this Act and main-

tains appropriate involvement of, and training for, management and non-management employees in achieving safe and healthful working conditions, may be exempt from an inspection (except an inspection requested under section 8(f) or an inspection to determine the cause of a workplace accident which resulted in the death of one or more employees or hospitalization for 3 or more employees) for a period of one year from the closing of the consultative visit.

(5) A State shall provide worksite consultations under paragraph (2) at the request of an employer. Priority in scheduling such consultations shall be assigned to requests from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request.

